

Mark: HOTSPRING

Serial No.: 88339355

Date: August 28, 2019

Response to Office Action Dated 5/30/2019

The Office Action initially refused registration in Class 35 only based on Reg. Nos. 3428064 and 4790540 for HOTSPRING and HOTSPRING & design, respectively, which identify retail store services featuring hot tubs and spas, as well closely related items such as filters, covers, handrails, water treatment chemicals, etc., "all for use with hot tubs and spas in the nature of heated whirlpools."

Applicant's Class 35 identification is, in contrast, "provision of an on-line marketplace for buyers and sellers of goods and services; provision of an on-line marketplace for buyers and sellers in the field of digital content and services." The Office Action includes evidence that purports to show "that retail stores have been expanding into online marketplaces." It appears that the perceived conflict is with the first part of Applicant's Class 35 identification ("provision of an on-line marketplace for buyers and sellers of goods and services") which might arguably be seen as broad enough encompass online marketplaces for hot tubs and related items. Although Applicant strongly disagrees that there is a likelihood of confusion here, Applicant has herewith amended its application to remove this language.

With the submitted amendment, Applicant's Class 35 identification is now "provision of an on-line marketplace for buyers and sellers in the field of digital content and services." Even if it can be reasonably assumed that Registrant might expand its services to include an online marketplace for hot tubs and related items used with hot tubs, there is no evidence of record that retailers of hot tubs will expand into the wholly unrelated market of digital content and services and it is not reasonable to assume that such a crossover would occur.

Applicant respectfully submits that, with the submitted amendment, there is no likelihood of confusion and requests that its application be allowed to proceed to publication in both Class 35 and Class 42.